

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAFAEL APOLINAR,

Petitioner,

v.

RAYMOND MADDEN,

Respondent.

No. 1:21-cv-00217-ADA-SAB (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DENYING
PETITION FOR WRIT OF HABEAS
CORPUS, DIRECTING CLERK OF COURT
TO CLOSE CASE, AND DECLINING TO
ISSUE CERTIFICATE OF APPEALABILITY

(ECF No. 28)

Petitioner Rafael Apolinar (“Petitioner”) is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On October 11, 2022,¹ the assigned Magistrate Judge issued findings and recommendations recommending that the petition be denied. (ECF No. 28.) The findings and recommendations were served on the parties and contained notice that any objections thereto were to be filed within thirty days after service. (*Id.*) To date, no objections have been filed, and the time for doing so has passed.

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¹ The findings and recommendations were signed on October 7, 2022, but not docketed until October 11, 2022.

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a
2 *de novo* review of the case. Having carefully reviewed the entire file, the Court holds the findings
3 and recommendations to be supported by the record and proper analysis.

4 Having found that Petitioner is not entitled to habeas relief, the Court now turns to
5 whether a certificate of appealability should issue. A petitioner seeking a writ of habeas corpus
6 has no absolute entitlement to appeal a district court's denial of his petition, and an appeal is only
7 allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003); 28 U.S.C.
8 § 2253. If a court denies a habeas petition on the merits, the court may only issue a certificate of
9 appealability “if jurists of reason could disagree with the district court’s resolution of [the
10 petitioner’s] constitutional claims or that jurists could conclude the issues presented are adequate
11 to deserve encouragement to proceed further.” *Miller-El*, 537 U.S. at 327; *Slack v. McDaniel*,
12 529 U.S. 473, 484 (2000). While the petitioner is not required to prove the merits of his case, he
13 must demonstrate “something more than the absence of frivolity or the existence of mere good
14 faith on his . . . part.” *Miller-El*, 537 U.S. at 338.

15 In the present case, the Court finds that reasonable jurists would not find the Court’s
16 determination that the petition should be denied debatable or wrong, or that the issues presented
17 are deserving of encouragement to proceed further. Petitioner has not made the required
18 substantial showing of the denial of a constitutional right. Therefore, the Court declines to issue a
19 certificate of appealability.

20 Accordingly:

21 1. The findings and recommendations issued on October 11, 2022, (ECF No. 28), are
22 adopted in full;

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- 1 2. The petition for writ of habeas corpus is denied;
- 2 3. The Clerk of Court is directed to close the case; and
- 3 4. The Court declines to issue a certificate of appealability.

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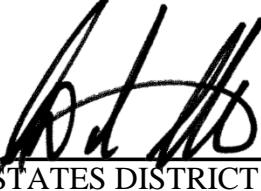
5 IT IS SO ORDERED.

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7 Dated: February 2, 2023

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11 UNITED STATES DISTRICT JUDGE

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